H.C. REALTY SDN. BHD.

v.

EASTERN & ORIENTAL HOTEL [1951] SDN. BHD.

HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMED JC
[CIVIL PROCEEDINGS NO. 22-148-89]
25 JULY 1991

CONTRACT: *Sale of apartment - Deposit - Project abandoned - Claim for return of deposit - Actual purchaser - Nominee - Bound within sale and purchase agreement - Parol evidence excluded.*

By a sale and purchase agreement dated 28 February 1982 the defendants agreed to sell and the plaintiffs agreed to purchase one unit of residential apartment at a total purchase price of RM568,000. The plaintiffs paid a sum of RM170,400 (the said sum) towards the deposit which included a sum of RM23,200 which was credited to the plaintiffs as commission for assisting the defendants to sell 8 units of the apartments.

The project was however abandoned by the defendants and the plaintiffs therefore claimed a refund of the said sum, interest, damages and costs.

The defendants denied that it was the plaintiffs who actually paid the said sum and stated that the actual purchaser was one C and that the plaintiffs were the nominees of the said C who was an architect engaged by the defendants to undertake the planning and due execution of the project.

The defendants further contended that as C was negligent in the performance of his duties, losses were suffered by the defendants and as such the defendants were not obliged to refund the amount claimed.

The defendants state that the letter from them requesting confirmation from the plaintiffs that the progress payments received was the said sum was written under a mistake. This was the plaintiffs' application for summary judgment.

Held:

[1] By alleging that the sale of the apartment was in actual fact to C and not to the plaintiffs, the defendants were trying to introduce "an oral agreement". This is clearly excluded by cl. 37 of the sale and purchase agreement.

[2] It did not matter that the payments were not made by the plaintiffs themselves but by C. The parties had agreed as to the manner of payment and the defendants had credited the amounts towards the purchase price.

[3] Whether C was negligent or not was a separate matter which was the subject matter of another civil suit which had been settled.

[4] The defendants are bound by the sale and purchase agreement they entered into with the plaintiffs. There is no suggestion of fraud or misrepresentation.

[5] There are no issues or questions in dispute which ought to be tried nor are there any other reasons that this action should be tried.

[Judgment for plaintiffs.]

Cases referred to:
Curtis v. Chemical Cleaning & Dyeing Co. Ltd. [1951] 1 All ER 631 ***(cit)***
Y.K. Fung Securities Sdn. Bhd. v. Ronald Yeoh Kheng Hian [1989] 2 CLJ (Rep) 664 ***(cit)***
Pernas Trading Sdn. Bhd. v. Persatuan Peladang Bakti Melaka [1979] 2 MLJ 224 ***(cit)***

Legislation referred to:
Rules of the High Court 1980, O. 81

For the Plaintiffs - R.J. Manecksha; M/s. Ong & Manecksha
For the Defendants - Rosli Dahlan; M/s. Allen & Gledhill

[**Editor' Note:** The defendants appealed to the Supreme Court on 18 July 1991 *vide* Supreme Court Civil Appeal No. 2-279-91.]

JUDGMENT

Abdul Hamid Mohamed JC:

The plaintiffs' claim was based on a sale and purchase agreement dated 28 February 1982. The defendants agreed to sell and the plaintiffs agreed to purchase one unit of residential apartment at a total purchase price of RM568,000. According to the plaintiffs, they had paid RM170,400 towards the purchase price which includes a commission for assisting the defendants to sell eight units of the apartments. This commission was credited towards the purchase price, making a total of RM170,400. By a letter dated 21 May 1985 from the defendants' accountant to the plaintiffs, the latter requested the plaintiffs to confirm that the progress payments received by the defendants from the plaintiffs was RM170,400. The plaintiffs duly confirmed the same. However, the project was abandoned by the defendants. The plaintiffs therefore claimed for the refund of the said sum of RM170,400, interest, damages and costs.

In their defence, the defendants denied that the plaintiffs actually paid the sum of RM170,400. The defendants stated that the actual purchaser was one Chan Huat Chye and that the plaintiffs were the nominees of the said Chan Huat Chye. Chan Huat Chye was an architect engaged by the defendants to undertake the planning and due execution of the project. To cut the matter short, according to the defendants, Chan Huat Chye requested the plaintiffs to be his nominees or assignees. The defendants too agreed to the nomination or assignment. So, the plaintiffs and the defendants entered into the said sale and purchase agreement. The defendants went on to say that Chan Huat Chye was negligent in the discharge of his professional duties. As a result the defendants sued Chan Huat Chye. The suit was settled for RM8.2 million. In short, the defendants' stand was that since the plaintiffs did not actually pay the said sum themselves but it was credited from money receivable by Chan Huat Chye and as Chan Huat Chye was negligent resulting in losses suffered by the defendants, the defendants were not obliged to refund the amount claimed.

As regards the letter dated 21 May 1985, the defendants said it was written under a mistake.

The plaintiffs applied for summary judgment under O. 81 Rules of the High Court 1980.

In support of the application, Chan Huat Chye filed an affidavit reiterating what had been said in the statement of claim. He also exhibited, *inter alia*, the sale and purchase agreement, copies of payment receipts issued by the defendants to plaintiffs, debit note regarding the commission of RM23,200, a letter from the defendants to the plaintiffs dated 18 May 1984 asking the plaintiffs to confirm that the defendants had received RM170,400 from the plaintiffs, which was confirmed.

A further affidavit was filed for and on behalf of the defendants saying that the plaintiffs

were only "a RM3 company" and that "the defendants would not have agreed to sell a RM568,000 property to a RM3 company".

By alleging that the sale of the apartment was in actual fact to Chan Huat Chye and not to the plaintiffs, the defendants were trying to introduce "an oral agreement". This is clearly excluded by cl. 37 of the sale and purchase agreement;

> (a) This agreement embodies all the terms and conditions agreed upon between the parties as to the subject matter of this agreement and supersedes and cancels in all respects all previous agreements and undertakings, if any, between the parties hereto with respect to (*sic*) the subject matter hereof, whether such be written or oral.
>
> (b) No oral explanation or oral information by the parties hereto or any of them shall alter the meaning or interpretation of this agreement.
>
> (c) This agreement shall be amended only in writing and each and every amendment thereto shall be executed in the like manner by which these presents are executed.

Furthermore, in *Curtis v. Chemical Cleaning & Dyeing Co. Ltd.* [1951] 1 All ER 631 CA, Denning LJ said, at p. 633:

> If the party affected signs a written document, knowing it to be a contract which governs the relations between him and the other party, his signature is irrefragable evidence of his assent to the whole contract...

See also *Y.K. Fung Securities Sdn. Bhd. v. Ronald Yeoh Kheng Hian* [1989] 2 CLJ (Rep) 664 and *Pernas Trading Sdn. Bhd. v. Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 224.

To me this is a very clear case. Whether it was wise for the defendants to do so or not, the defendants had agreed to sell one unit of the residential apartment to the plaintiffs. The defendants had entered into a sale and purchase agreement with the plaintiffs. The defendants had issued receipts and debit note for the amount credited towards the purchase price. The defendants had by a letter dated 18 May 1984 and again by letter from their accountant dated 21 May 1985 (this last-mentioned letter though not exhibited was admitted by the defendants) asked the plaintiffs to confirm that the amount of RM170,400 received by the defendants from the plaintiffs as "progress payment" which was confirmed by the plaintiffs. I do not think it is open to the defendants to say that they are not obliged to refund the same for the reasons given by them.

They are bound by the sale and purchase agreement they entered into with the plaintiffs. There is no suggestion of fraud or misrepresentation. It does not matter that the payments were not made by the plaintiffs themselves. The parties agreed as to the manner of payment and the defendants had credited the said amount towards the purchase price. Whether Chan Huat Chye was negligent or not is a separate matter. It was a subject matter of another civil suit. Indeed the civil suit had been settled.

In the circumstances, I am of the view that there are no issues or questions in dispute which ought to be tried or that there are other reasons that this action should be tried. I gave judgment to the plaintiffs as per prayer (i) of the summons for summary judgment and costs.

Also found at [1991] 3 CLJ 2481